

BARCLAY DAMON LLP

Matthew J. Larkin
Partner

January 26, 2024

VIA ECF

Hon. Miroslav Lovric
Magistrate Judge
U.S. District Court
Northern District of New York
15 Henry Street
Binghamton, NY 13901

Re: Kearns v. Wallin and Syracuse University
NDNY Civil No.: 5:23-cv-01500 (DNH-ML)

Dear Magistrate Judge Lovric:

As you are aware, we represent Syracuse University (“SU”) in the above-referenced matter. We respectfully submit this status report addressing diversity jurisdiction, as directed by the Court in the January 16, 2024, Text Order. *See* Docket No. 17.

On November 29, 2023, SU removed this case from the Supreme Court of New York, County of Onondaga, to the United States District Court for the Northern District of New York. *See* Docket No. 1. Jurisdiction is based on diversity of citizenship pursuant to 28 U.S.C. § 1332. This action is brought under New York’s Adult Survivor’s Act, and concerns events alleged to have occurred from October to December of 1986. *See* Docket No. 2, ¶¶ 4-5. Under 28 U.S.C. § 1332, this Court has original jurisdiction over this action, as complete diversity exists between the parties and the amount in controversy exceeds \$75,000.

An individual’s citizenship “depends on his domicile.” *See IndyMacVenture, LLC v. Mulligan*, 2019 U.S. Dist. LEXIS 149810, at *6 (E.D.N.Y. Aug. 30, 2019) (citing *Davis v. Cannick*, 691 F.App’x 673, 673 (2d Cir. 2017) (internal quotations omitted)). Domicile is where one has “his true fixed home and principal establishment, and to which whenever he is absent, he has the intention of returning.” *Linardos v. Fortuna*, 157 F.3d 945, 948 (2d Cir. 1998). Domicile requires (1) physical presence in a state, and (2) the intent to make the state a home. *See Ariz. Hudson Valley LLC v. Pietrzykowski*, 2021 U.S. Dist. LEXIS 129325, at *7 (S.D.N.Y. July 9, 2021) (citing *Palazzo v. Corio*, 232 F.3d 38, 42 (2d. Cir 2000)). Factors courts have considered in determining a party’s citizenship include “the place where civil and political rights are exercised, taxes paid, real and personal property (such as furniture and automobiles) located, driver’s and other licenses obtained, bank accounts maintained, location of club and church membership and

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places of business or employment.” *Ariz. Hudson Valley LLC*, at *8 (citing *Nat'l Artists Mgmt. Co. v. Weaving*, 769 F.Supp. 1224, 1228 (S.D.N.Y. 1991)).

Under these standards, there is no question that Plaintiff is a domiciliary and citizen of the State of New Jersey. Plaintiff owns the property where he admittedly resides in Medford, New Jersey. *See* Docket No. 2, ¶ 2; Township of Medford Block, Lot, and Ownership Information, attached hereto as **Exhibit “A.”**¹ The 2023 Final/2024 Preliminary Tax Bill for that property is addressed to Plaintiff. *See* 2023 Final/2024 Preliminary Tax Bill, attached hereto as **Exhibit “B.”** Bills for water and sewer services are addressed to, charged to, and paid by Plaintiff. *See* Water and Sewer Bills, annexed hereto as **Exhibit “C.”** Plaintiff is actively registered to vote in Medford Township, New Jersey. *See* Plaintiff’s Voter Information annexed hereto as **Exhibit “D.”** Further, Plaintiff operates the Frontieria Company from his residence in Medford, New Jersey, according to the company’s “Contact” page. *See* Frontieria Company, Team, <https://www.frontieria.com/team> (last visited on Jan. 25, 2024); Frontieria Company, Contact, <https://www.frontieria.com/contact-frontieria/> (last visited on Jan. 25, 2024).

Plaintiff owns his residence in New Jersey. He pays utilities and taxes, and is registered to vote there. His place of business and employment is located in New Jersey. Using the factors that courts have routinely considered in determining citizenship, Plaintiff is a citizen of New Jersey. *Ariz. Hudson Valley LLC*, at *8.

Defendant Theodore O. Wallin’s New York citizenship is equally verified. Defendant Wallin has a New York State driver’s license, which indicates his address in Syracuse, New York. *See* Wallin DMV Record annexed hereto as **Exhibit “E.”** The same Syracuse address is on file with SU, as a retiree from its faculty. *See* Wallin SU Contact Information, annexed hereto as **Exhibit “F.”** Further, Defendant Wallin’s counsel has confirmed that he owns and resides in Syracuse and pays New York State taxes. *See* Docket No. 24. As such, Defendant Wallin is a citizen of the State of New York for purposes of diversity jurisdiction.

Although the Text Order does not require SU to prove its own citizenship, SU is a citizen of the State of New York. A corporation is treated as a citizen of its state of incorporation and its principle place of business. *Bayerische Landesbank v. Aladdin Capital Mgmt. LLC*, 692 F.3d 42, 51 (2d Cir. 2012). SU is a domestic not-for-profit educational corporation organized and existing under and pursuant to the terms of a special charter granted by Chapter 414 of the New York Laws of 1887. *See* An Act for the Re-Organization and Incorporation of Syracuse University, Syracuse U. Charter, Laws of 1887, ch. 414. Its principle place of business is located in Syracuse. Certainly, SU is a citizen of the State of New York.

As stated in greater detail in SU’s Notice of Removal, the compensatory and punitive damages sought by Plaintiff exceed the jurisdictional amount of \$75,000. *See* Docket No. 1. This,

¹ Redactions have been made to all exhibits pursuant to N.D.N.Y. L. R. 5.2(a). Un-redacted copies will be submitted upon request of the Court.

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combined with the complete diversity of citizenship of the parties, gives the Court diversity jurisdiction under 28 U.S.C. § 1332.

We respectfully submit that this Court does, in fact, have diversity jurisdiction in this matter. Thank you for your consideration. We remain available to the Court if a conference is required.

Respectfully submitted,



Matthew J. Larkin

MJL

cc: Counsel of Record **Via ECF**

Attachments